




Office of the City Manager

CONSENT CALENDAR

June 12, 2007

To: Honorable Mayor and  
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Lisa Caronna, Acting Director, Housing Department

Subject: Oxford Plaza Project – Amendment to the Housing Trust Fund and DDA  
Regulatory Agreement (Contract No. 7172)

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an Amendment to the Disposition and Development Agreement and Housing Trust Fund Regulatory Agreement that in the event Project-Based Section 8 assistance to the Oxford Plaza Apartments project is terminated for reasons unrelated to any default by the Borrower under Section 8 requirements, the City Council agrees to permit Housing staff and the City Manager to consider, evaluate, and if appropriate, approve increases in the rent limitations applicable to any units occupied by households with an income of no greater than twenty percent and thirty percent of Area Median Income previously covered by Section 8 assistance, to a rent that is affordable to households with an income of no greater than fifty percent of Area Median Income, as necessary for the Oxford Plaza project to maintain economic feasibility in the reasonable determination of the City.

FISCAL IMPACTS OF RECOMMENDATION

Staff does not foresee any additional costs to the project as a result of amending the Regulatory Agreement of the Disposition and Development Agreement (DDA) and Housing Trust Fund (HTF) Development Loan Agreement to modify the affordability of the Project-Based (PB) Section 8 units in the event that either the PB Section 8 or the Section 8 Program would be terminated. Wells Fargo Bank is concerned with the repayment of its \$2.4 million loan, which depends upon the Oxford Plaza maintaining 24 of the 97 rental units as PB subsidized units. In the event that the PB Section 8 subsidy would terminate during the 20-year term, the Oxford Plaza project would probably be unable to pay the debt repayments on the loan if the rent levels on these units were not adjusted to allow for an increase.

CURRENT SITUATION AND ITS EFFECTS

As part of the financing for the Oxford Plaza affordable housing parcel, Wells Fargo Bank is the construction lender. In addition, the Bank will also be advancing approximately \$2.4 million loan with a term of twenty years for the development of the project. This \$2.4 million loan is based upon the project's securing 24 PB vouchers for a 20-year time period. When PB vouchers are approved for a development, it allows the owner to enter into a 10-year term Agreement to

enter into Housing Assistance Payments (AHAP) to secure these housing subsidy payments. The Housing Authority is permitted to approve two additional five-year options to renew the PB Vouchers in year nine of the ten-year term of the AHAP contract if the project continues to meet the Program guidelines. Based upon the Housing Authority's agreement to consider the two five-year extensions prior to that time, Wells Fargo Bank agreed to a twenty-year term loan and increased the loan for an additional amount of approximately \$900,000 so as to provide for the total \$2.4 million loan for the development of Oxford Plaza apartments. This loan is based upon the estimated future receipts of the Section 8 subsidy level to be paid on the 24 units over the 20-year term of the loan.

However, since there is no guarantee that the Section 8 assistance to the project could not be terminated or that the Section 8 PB Vouchers would be approved for an additional two five-year extensions, Wells Fargo Bank has requested that an amendment be made to both the HTF and Redevelopment Agency Regulatory Agreements. If the amendment is approved by the City Council, Oxford Plaza, L.P. and Wells Fargo Bank would then work directly with the Housing staff on a request to raise the affordability levels as necessary to sustain the project's financial feasibility with a cap of 50% of AMI, and the City Manager would be authorized to issue written approval of the new rent levels.

In order to satisfy Wells Fargo's request, staff proposes that the City's DDA and HTF Regulatory Agreement be amended to include the following language:

“In the event project-based Section 8 assistance to the Project is terminated for reasons unrelated to any default by the Borrower under Section 8 requirements, the Borrower may increase the rent limitations applicable to any Twenty Percent Units and the Extremely Low Income Units previously covered by project-based Section 8 assistance to levels no greater than the limitations applicable to the Very Low Income Units hereunder, as necessary for Project economic feasibility, in the reasonable written determination of City staff and without further approval from the City Council.”

As part of its agreement with Wells Fargo Bank, the Oxford Plaza L.P. agreed that, on or before June 15, 2007, the City and Berkeley Redevelopment Agency will have amended their regulatory agreements to provide that, if Section 8 assistance is discontinued to the Project, the rent restrictions for such units will be changed to allow an increase in rents to result in units being affordable to households with an income of 50% AMI (affordable meaning rents not to exceed 30% of 50% AMI), to the extent necessary for Project feasibility in the reasonable determination of the City staff.

If, in the unlikely event that the Section 8 assistance to the project is terminated this proposed amendment would delegate to the Housing staff and the City Manager the authority to raise the rents of the PB units upon tenant turn-over in these units. The current affordability restrictions on the project include 10 studio apartments to be rented to households with income of no greater than 20% of Area Median Income (AMI) and 14 one, two, and three-bedroom units to be rented

to households with income of no greater than 30% of AMI. The rents on these 24 units could be raised to be affordable to households with an income of no greater than 50% of AMI. By raising the affordability requirements of the 24 units up to 50% of AMI, it would provide the project with more rental income to meet debt repayment requirements so that Oxford Plaza Limited Partnership could then meet its annual debt service requirements.

Staff does not foresee any additional costs to the project as a result of amending the Regulatory Agreement of the DDA and HTF to modify the affordability of the Section 8 Project-Based (PB) units in the event that either the PB Section 8 Program or the PB assistance to the Project would be terminated. Wells Fargo Bank is concerned with the repayment of its \$2.4 million loan, which depends upon the Oxford Plaza maintaining 24 of the 97 rental units as PB subsidized units. In the event that the Section 8 subsidy would terminate during the 20-year term, the Oxford Plaza would probably be unable to pay the debt repayments on the loan if the rent levels were not adjusted as proposed.

#### BACKGROUND

On March 13, 2007, the City and Resources for Community Development (RCD) entered into a HTF Development Loan Agreement for a total of \$4,300,040. Some of the proceeds of the HTF funds permitted RCD to complete the purchase the parcel on which the future housing will be constructed. The assignment of the ownership was then made to the Oxford Plaza Limited Partnership. As part of the agreement a “Regulatory Agreement and Declaration of Restrictive Covenants” was filed and recorded on the parcel. Among the covenants in Regulatory Agreement are requirements related to the affordability and the term of the affordability of the rental units.

The remaining financing for the Oxford Plaza and David Brower Center was secured and the final loan closing was held on March 26, 2007. On March 27, the Oxford lot property was transferred to the Developer and the Developer started clearing activities on April 2, 2007. The Oxford Plaza Limited Partnership purchased the air rights parcel for the affordable housing. The development is scheduled to complete construction by January 31, 2009.

Approval by HUD of the 24 Project-Based (PB) Section 8 vouchers was secured on March 29, 2007. Wells Fargo Bank was concerned about the impact of the ability of the project to pay the debt repayments on its loan given that such repayments would be jeopardized if the Section 8 PB assistance was terminated.

The HTF Guidelines require that changes to Regulatory Agreements be reviewed by the Housing Advisory Commission (HAC) and approved by the City Council if a borrower proposed to change the affordability levels on any units. Given that requirement, Wells Fargo Bank requested that the HAC and City Council to waive the HTF Guidelines and allow the Regulatory Agreement to be amended to authorize the Housing Department staff and the City Manager to review and approve an increase in affordability levels if the Section 8 assistance to the project is terminated due to no fault of Oxford Plaza LP. If the amendment is approved by the City Council, Oxford Plaza, L.P. and Wells Fargo Bank would then work directly with the Housing

staff on a request to raise the affordability levels as necessary to sustain the project's financial feasibility with a cap of 50% of AMI, and the City Manager would be authorized to issue written approval of the new rent levels.

It is understood that, in the event that the Section 8 PB Program would be terminated, then the Section 8 PB tenants would receive a portable Housing Choice voucher. When the tenant elected to leave the unit with the portable voucher, the unit's rents could then be raised to those affordable to (30% of 50% AMI) households with income of no greater than 50% of AMI.

#### RATIONALE FOR RECOMMENDATION

The issue described above benefits the affordable housing parcel and the City's long-term affordable housing and community development goals by permitting the staff to work with the Oxford Plaza LP and Wells Fargo Bank to raise the affordability levels to 50% of AMI for all previously leased PB Section 8 rental units. This would permit the Project to remain economically viable and meet its repayment obligations, especially on its Wells Fargo loan. The HAC members reviewed and recommended approval of this request at its meeting on May 3, 2007.

#### ALTERNATIVE ACTIONS CONSIDERED

It is in the City's interest to establish an alternative to returning to the HAC and City Council in order to approve an increase in the affordability levels for the Section 8 units of the project if the Section 8 PB assistance to the project is terminated. If Section 8 assistance is terminated at any time during the 20-year term, the rents on these affected units will have to be quickly adjusted to provide the revenues necessary to keep the affordable housing project economically viable.

#### CONTACT PERSON

Lisa Caronna, Acting Director, Housing Department, 981-5400

Attachment:

- 1: Resolution
2. First Amendment to Regulatory Agreement

RESOLUTION NO.            -N. S.

CONTRACT AMENDMENT: DISPOSITION AND DEVELOPMENT AGREEMENT AND HOUSING TRUST FUND REGULATORY AGREEMENT

WHEREAS, the City Council of the City of Berkeley established the Housing Trust Fund Program to assisted in the development and expansion of housing affordable to low-income persons in the City; and

WHEREAS, the City approved funds from the Housing Trust Fund for the development of the Oxford Plaza Apartments; and

WHEREAS, the City and Resources for Community Development, a California nonprofit corporation, entered into that certain Regulatory Agreement and Declaration of Restrictive Covenants dated as of March 13, 2007, to provide affordable and special needs housing opportunities to the City's residents; and

WHEREAS, pursuant to that certain Assignment and Assumption Agreement dated as of March 26, 2007, and recorded against the Property, RCD has assigned, and the Oxford Plaza, L.P. has assumed RCD's obligations and duties under the Regulatory Agreement; and

WHEREAS, the Oxford Plaza, L.P. and the City desire to enter into this First Amendment to amend the Regulatory Agreement to permit Housing staff and the City Manager to consider, evaluate, and approve certain rent increases to maintain economic feasibility in the reasonable determination by the City that the it is necessary in the event of the loss of the Project-Based Section 8 assistance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City Berkeley that the City Manager is authorized to execute an Amendment to the Disposition and Development Agreement and Housing Trust Fund Regulatory Agreement that in the event Project-Based Section 8 assistance to the Oxford Plaza Apartments project is terminated for reasons unrelated to any default by the Borrower under Section 8 requirements, the City Manager, in consultation with Housing staff, may approve an increase in the rent limitations applicable to any twenty percent and thirty percent of Area Median Income Units previously covered by Section 8 assistance, to levels no greater than the limitations applicable to fifty percent of Area Median Income, as necessary for the Oxford Plaza project to maintain economic feasibility in the reasonable determination by the City.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect upon adoption.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704  
Attn: Housing Manager

No fee for recording pursuant to  
Government Code Section 27383

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FIRST AMENDMENT TO REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
**(HOME/LOCAL FUNDS; DDA)**

This First Amendment to Regulatory Agreement and Declaration of Restrictive Covenants (the "First Amendment") is made as of this \_\_\_ day of \_\_\_, 2007, by and between Oxford Plaza, L.P., a California limited partnership (the "Owner") and the City of Berkeley, a municipal corporation (the "City") in reference to the following acts:

RECITALS

- A. The City and Resources for Community Development, a California nonprofit corporation ("RCD"), entered into that certain Regulatory Agreement and Declaration of Restrictive Covenants dated as of March 13, 2007, and recorded in the official records of Alameda County as document 2007-125192 ("Regulatory Agreement"), covering that certain real property located in the City of Berkeley, County of Alameda, State of California, and described more particularly in Exhibit A, attached hereto and incorporated herein (the "Property").
- B. Pursuant to that certain Assignment and Assumption Agreement dated as of March 26, 2007, and recorded against the Property as document number 2007-125203, RCD has assigned, and the Owner has assumed, RCD's obligations and duties under the Regulatory Agreement.
- C. The Owner and the City desire to enter into this First Amendment to amend the Regulatory Agreement as more particularly set forth below. All initial capitalized terms when used herein without definition shall have the meanings given such terms in the Regulatory Agreement.

## AGREEMENT

1. Amendment to Section 2.2(f). Section 2.2(f) of the Regulatory Agreement is hereby deleted in its entirety and is replaced and amended as follows:

"(f) Loss of Section 8 Assistance. In the event project-based Section 8 assistance to the Project is terminated for reasons unrelated to any default by the Borrower under Section 8 requirements, the Borrower may increase the rent limitations applicable to any Twenty Percent Units and the Extremely Low Income Units previously covered by project-based Section 8 assistance to levels no greater than the limitations applicable to the Very Low Income Units hereunder, as necessary for Project economic feasibility, in the reasonable written determination of City staff and without further approval from the City Council."

2. Effect on Regulatory Agreement. Except as supplemented herein, all provisions of the Regulatory Agreement remain in full force and effect. In the event of any conflict between the terms of this First Amendment and the Regulatory Agreement, the terms of this First Amendment shall prevail.

3. Counterparts; Multiple Originals. This First Amendment may be signed in counterparts, and multiple originals, each of which shall constitute one and the same instrument.

*REMAINDER OF PAGE LEFT INTENTIONALLY BLANK*

IN WITNESS WHEREOF, the undersigned have executed this First Amendment the day and year first herein above written

APPROVED AS TO FORM:

CITY:

CITY OF BERKELEY,  
a California municipal corporation

By: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

Philip Kamlarz, City Manager

OWNER:

OXFORD PLAZA, L.P., a California limited  
partnership

RESOURCES FOR COMMUNITY DEVELOPMENT,  
a California nonprofit corporation, its general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXIHIBT A  
Legal Description of the Property

